

TECHNICAL AMENDMENT
May 4, 2018

405 KAR 10:050. Bond forfeiture.

RELATES TO: KRS 350.020, 350.060, 350.064, 350.093, 350.095, 350.130, 350.131, 350.151, 350.465, 30 C.F.R. Parts 730-733, 735, 800.50, 917, 30 U.S.C. 1253, 1255

STATUTORY AUTHORITY: KRS Chapter 13A, 350.020, 350.028, 350.060, 350.064, 350.130, 350.151, 350.465, 30 C.F.R. Parts 730-733, 735, 800.50, 917, 30 U.S.C. 1253, 1255

NECESSITY, FUNCTION, AND CONFORMITY: KRS Chapter 350 in pertinent part requires the cabinet to regulate surface coal mining and reclamation operations in a manner as to insure that satisfactory reclamation is accomplished. This administrative regulation sets forth the procedures and criteria by means of which a bond may be forfeited to the cabinet. This administrative regulation sets forth that certain violations of KRS Chapter 350 and administrative regulations promulgated pursuant to that chapter may cause a bond to be forfeited. This administrative regulation sets forth that a hearing may be requested before forfeiture can be effected. This administrative regulation specifies a method to determine the amount of bond forfeiture. This administrative regulation establishes criteria under which unused forfeited bond funds shall be returned to the person from whom they were collected.

Section 1. General. (1) The cabinet shall forfeit all of the remaining bond amount for any permit or increment pursuant to the procedures and criteria of this administrative regulation.

(2) The cabinet may withhold forfeiture if the permittee or the surety agrees to a compliance schedule to correct the violations of the permit or bond conditions.

(3) The cabinet shall withhold forfeiture and allow the surety or other financial institution providing bond to complete the reclamation plan if the surety or other financial institution can demonstrate the ability to complete the reclamation plan, including achievement of the capability to support the post-mining land use approved by the cabinet, and will undertake to do so within a reasonable time frame and agrees to a compliance schedule. Neither the surety company nor other financial institution shall employ anyone to perform the measures who has been barred from mining pursuant to the provisions of KRS Chapter 350.

Section 2. Procedures. (1) If forfeiture of the bond is required by Section 3 of this administrative regulation, the cabinet shall:

(a) Send written notification by certified mail, return receipt requested, to the permittee, and to the surety on the bond, if applicable, of the cabinet's determination to initiate forfeiture of the bond and the reasons for the forfeiture;

(b) Advise the permittee and surety, if applicable, of their right to challenge the determination pursuant to 400 KAR 1:110~~[405 KAR 7:092]~~, Section 9; and

(c) If no hearing is requested within thirty (30) days following notification and the bond proceeds are not received, the secretary shall enter a final order of forfeiture and the cabinet shall proceed in an action for collection on the bond.

(2) The cabinet may, as an alternative to following the procedures of subsection (1) of this section, initiate formal hearing procedures concerning forfeiture of the bond alone or in conjunction with the cabinet's action for other appropriate remedies against the permittee pursuant to 400 KAR 1:110~~[405 KAR 7:092]~~, Section 5.

(3) The cabinet shall utilize funds collected from bond forfeiture to complete the reclamation plan on the permit area or increment on which bond coverage applied, and to cover associated administrative expenses. The funds shall be deposited in an appropriate account for the payment of these

costs. Funds remaining after reclamation shall be returned to the person from whom the forfeiture proceeds were received, subject to the cabinet's right to attach or setoff the proceeds under state law.

(4) In the event the amount forfeited is insufficient to pay for the full cost of reclamation, the permittee or operator shall be liable for remaining costs. The cabinet may complete, or authorize completion of, reclamation of the bonded area and may recover from the permittee or operator all costs of reclamation in excess of the amount forfeited.

(5) Return of unused forfeited bond funds for interim or permanent program permit area overlapped by permanent program permit area. If the cabinet has not completed the reclamation plan on a permit area under 405 KAR Chapter 1 or 3 for which the bond was forfeited on or after July 15, 1988, or if the cabinet has not completed the reclamation plan on a permit area under 405 KAR Chapters 7-24 for which the bond was forfeited, and if the permit area and any related off-permit disturbances are entirely contained within the permit area of a subsequent valid permit under 405 KAR Chapters 7-24 for which the bond is in force, the cabinet shall retain the funds from the forfeited bond until the entire overlapped permit area and any related off-permit disturbances have been disturbed by the overlapping permittee and then shall return the unused funds to the person from whom the forfeiture proceeds were received, subject to the cabinet's right to attach or set off the proceeds under state law.

Section 3. Criteria for Forfeiture. (1) A bond for a permit area or increment shall be forfeited, if the cabinet finds that:

(a) The permittee has violated any of the terms or conditions of the bond and has failed to take corrective action;

(b) The permittee has failed to conduct the surface mining and reclamation operations in accordance with KRS Chapter 350, the conditions of the permit or 405 KAR Chapters 7 through 24 within the time required;

(c) The permit for the area or increment under bond has been revoked or the operation terminated, unless the permittee, surety, or other financial institution providing bond assumes liability pursuant to an agreement for the completion of reclamation; or

(d) The permittee, surety, or other financial institution providing bond has failed to comply with a compliance schedule approved pursuant to Section 1(2) or (3) of this administrative regulation.

(2) A bond may be forfeited if the cabinet finds that:

(a)1. The permittee has become insolvent; or

2. A creditor of the permittee has attached or executed judgment against the permittee's equipment, materials, or facilities, at the permit area; and

(b) The permittee cannot demonstrate or prove the ability to continue to operate in compliance with KRS Chapter 350, 405 KAR Chapters 7 through 24, and the permit.

(3) The cabinet may forfeit a bond solely upon the permittee's failure to pay penalties or fines (if all reclamation requirements have been fully met) and retain the bond proceeds, or portion thereof as necessary to offset the penalty or fine owed (including administrative costs incurred by the cabinet), but the cabinet shall forfeit a bond under this circumstance only after the five (5) year liability period has expired; except that for surety bonds or bonds secured by a letter of credit:

(a) In no event shall the cabinet take any action to forfeit a surety bond or bond secured by a letter of credit under this circumstance until reclamation phase I and II monies have been released and the five (5) year liability period has expired; and

(b) If a forfeiture of a surety bond or a bond secured by a letter of credit under this circumstance has occurred, the cabinet shall not retain the surety bond or bond secured by letter of credit or any proceeds thereof and the permittee shall continue to be responsible for payment of the penalties or fines as well as administrative costs incurred by the cabinet.

Section 4. Forfeiture Amount. The cabinet shall forfeit the entire amount of the bond for the permit area or increment. (8 Ky.R. 1521; eff. 1-6-1983; 15 Ky.R. 451; 1073; eff. 12-13-1988; 20 Ky.R. 132; 544; eff. 9-22-1993; TAm eff. 5-4-2018.)